(2)

No. 03-1477

In the

Supreme Court of the United States

GERALD J. GESIORSKI and
DAWN S. GESIORSKI,

Petitioners,

v.

BRANCH BANKING & TRUST COMPANY,
successor-in-interest to CARROLL COUNTY BANK & TRUST,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is there a compelling reason for this Court to reconsider its holding that bankruptcy judges have jurisdiction to hear and determine motions regarding the termination, annulment or modification of the automatic stay arising in cases under Title 11 of the United States Code?

2. Is there a compelling reason for this Court to reconsider its holding that appellants fail to preserve for appeal any issue which they failed to raise in the lower court and any matter as to which they failed to place into the record on appeal any evidence?

3. Is there a compelling reason for this Court to reconsider its holding that issue preclusion applies to bankruptcy proceedings?

4. Is there a compelling reason for this Court to reconsider its holding that litigants are bound by the actions of their attorneys?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Respondent does not have a parent corporation and no publicly held company owns 10% or more of Respondent's stock.

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STATEMENT OF THE CASE

On December 23, 1992, Respondent loaned to Petitioners the sum of $735,000 (the "Loan") in consideration of, *inter alia,* the execution by Petitioners of a commercial promissory note (the "Note") in favor of Respondent and the grant by Petitioners to Respondent of a security interest in four commercial properties and Petitioners' residence. Petitioners defaulted on their obligations to Respondent under the terms of the Note. Pet., App. 4a, 19a, 24a.

On or about July 11, 1997, Respondent initiated in the Court of Common Pleas of York County, Pennsylvania, the case of Carroll County Bank & Trust v. Gesiorski (Case No. 97-NO-01961-01) and judgment by confession was entered in favor of Respondent and against Petitioners in the amount of $811,772.45 (the "Confessed Judgment"). Petitioners have filed no motion to open, modify or vacate the Confessed Judgment. *Id.*

On October 24, 1997, Petitioners initiated in the United States Bankruptcy Court for the Middle District of Pennsylvania the case of *In re* Gesiorski (Case No. 1-97-04554 RJW-1) (the "Bankruptcy Case") with the filing of a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code. *Id.*

On January 15, 1998, BB&T filed in the Bankruptcy Case a Proof of Claim (the "Proof of Claim") based upon the Confessed Judgment. Petitioners have filed no objection to the Proof of Claim. Pet., App. 4a.

During the pendency of the Bankruptcy Case, Petitioners and Respondent entered into seven court-approved stipulations and consent orders (collectively, the "Consent

Orders") granting relief from the 11 U.S.C. § 362 automatic stay and providing for adequate protection payments by Petitioners to Respondent. In each of the Consent Orders, Petitioners acknowledged the Confessed Judgment. Petitioners defaulted on their obligations to Respondent under the terms of each of the Consent Orders. Pet., App. 4a, 19a - 20a, 24a - 25a.

On February 19, 2002, in reaction to Respondent's indication that it was considering exercising its foreclosure rights under the terms of the Consent Orders and the laws of the Commonwealth of Pennsylvania, Petitioners filed in the Bankruptcy Case a motion to reinstate the automatic stay. By Order entered May 3, 2002 (the "Bankruptcy Order"), the Bankruptcy Court denied the motion. Pet., App. 4a - 5a, 20a, 25a, 31a, 38a - 42a.

On May 13, 2002, Petitioners initiated in the United States District Court for the Middle District of Pennsylvania the case of Gesiorski v. Branch Banking & Trust Co. (Case No. 1:02-cv-01003) with the filing of a notice of appeal. By Order entered October 25, 2002, the District Court affirmed the Bankruptcy Order. Pet., App. 5a, 22a.

On November 6, 2002, Petitioners initiated in the United States Court of Appeals for the Fourth Circuit the case of Gesiorski v. Branch Banking & Trust Co. (Docket No. 02-4071) with the filing of a notice of appeal. By Judgment entered March 11, 2004, the Court of Appeals affirmed the decision of the District Court. Pet., App. 1a - 2a.

On April 30, 2004, Petitioners filed a petition for writ of *certiorari* and the instant case was docketed in this Court.

ARGUMENT

There is no compelling reason to grant the petition for writ of *certiorari.* This case does not involve a Court of Appeals decision in conflict with the decision of another Court of Appeals on the same important matter. This case does not involve an important federal question decided by a Court of Appeals in a way that conflicts with a decision by a state court of last resort. This case does not involve a Court of Appeals decision which has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. This case does not involve an important federal question decided by a state court of last resort in a way that conflicts with the decision of another state court of last resort or of a Court of Appeals. This case does not involve a state court or Court of Appeals decision on an important question of federal law that has not been, but should be, settled by this Court. This case does not involve a state court or Court of Appeals decision on an important federal question in a way that conflicts with relevant decisions of this Court. *See* Sup.Ct.R. 10. This case is simply another link in a long chain of frivolous, dilatory maneuvers by Petitioners.

1. Bankruptcy judges have jurisdiction to hear and determine motions regarding the termination, annulment or modification of the automatic stay arising in cases under Title 11 of the United States Code.

Petitioners, who submitted themselves to the jurisdiction of the Bankruptcy Court by filing both their Chapter 11 proceeding and the motion for reinstatement of the automatic stay which is the subject of this appeal, now argue that the Bankruptcy Court had no jurisdiction over the matter. That

disingenuous argument has not only not been preserved for appeal because it was raised for the first time in the Court of Appeals, it also ignores the current state of affairs regarding bankruptcy court jurisdiction.

The Code states that, "[e]xcept as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). Subsection (b) states that "[n]otwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

The Code also states that "[e]ach district court may provide that . . . any or all proceedings . . . arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." 28 U.S.C. § 157(a).

The Code further provides that "Bankruptcy judges may hear and determine. . . all core proceedings . . . arising in a case under title 11 . . . and may enter appropriate orders and judgments, subject to review under section 158 of this title." 11 U.S.C. § 157(b)(1). "Core proceedings" are defined to include "motions to terminate, annul, or modify the automatic stay." 11 U.S.C. § 157(b)(2)(G). Otherwise stated,

> [a] proceeding is classified as "core" under 28 U.S.C. § 157 "if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *In re* Marcus Hook

> Development Park, Inc., 943 F.2d 261, 267 (3d Cir. 1991) (quoting Beard v. Braunstein, 914 F.2d 434, 444 (3d Cir. 1990) which, in turn, quoted *In re* Wood, 825 F.2d 90, 97 [(5th Cir. 1987)]). Thus, "if the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding . . . ." *In re* Guild & Gallery Plus, Inc., 72 F.3d 1171, 1178 (3d Cir. 1996).

In re New Knight, Inc., 291 B.R.367 (Bankr.E.D.Pa. 2003).

The Court of Appeals for the Third Circuit has discussed the issue of bankruptcy court jurisdiction as follows:

> Bankruptcy Court jurisdiction has been the subject of heated controversy in recent decades. In 1978, Congress attempted to centralize bankruptcy jurisdiction by granting District and Bankruptcy Courts expanded jurisdiction over cases arising under title 11. Under this scheme, Article I bankruptcy judges possessed full power to adjudicate not only cases arising directly under title 11, but also a wide range of other claims merely "related to" the title 11 proceedings. In Northern Pipeline Const. Co. v. Marathon Pipeline Co., 458 U.S. 50, 73 L. Ed. 2d 598, 102 S. Ct. 2858 (1982), however, the Supreme Court held the 1978 jurisdictional reform unconstitutional because its grant of judicial power to Article I Bankruptcy Courts violated the separation of powers doctrine by undermining Article III's

establishment of an independent judiciary.

In Marathon, the debtor had filed a chapter 11 petition in Bankruptcy Court and subsequently initiated an adversary proceeding against Marathon for various pre-petition violations of state law including breach of contract. The parties to the adversary proceeding were not diverse, and the dispute involved pure questions of state law presenting no federal question. The only basis for federal jurisdiction was the fact that one party was a chapter 11 debtor in bankruptcy. Distinguishing "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power . . . from the adjudication of state-created private rights, such as the right to recover damages that is at issue in this case," Justice Brennan concluded that the statute violated Article III because it unconstitutionally vested "all 'essential attributes' of the judicial power of the United States in the 'adjunct' [Article I] bankruptcy courts."

In 1984, Congress responded to Marathon and established the current bankruptcy jurisdiction regime codified at 28 U.S.C. § 1334 and 28 U.S.C. § 157. Section 1334 vests broad primary jurisdiction over bankruptcy proceedings in the District Courts. District Courts may, however, refer bankruptcy matters falling within their jurisdiction to the Bankruptcy Courts under 28 U.S.C. § 157(a). District Courts have exercised this power by

> "routinely referring most bankruptcy cases to the bankruptcy courts."
>
> Thus, a proceeding's core or non-core nature is crucial in bankruptcy cases because it defines both the extent of the Bankruptcy Court's jurisdiction, and the standard by which the District Court reviews its factual findings. To determine whether a proceeding is a "core" proceeding, courts of this Circuit must consult two sources. First, a court must consult § 157(b). Although § 157(b) does not precisely define "core" proceedings, it nonetheless provides an illustrative list of proceedings that may be considered "core." Second, the court must apply this court's test for a "core" proceeding. Under that test, "'a proceeding is core (1) if it invokes a substantive right provided by title 11 or (2) if it is a proceeding, that by its nature, could arise only in the context of a bankruptcy case.'"

Halper v. Halper, 164 F.3d 830 (3d Cir. 1999) (citations omitted).

The Bankruptcy Court had jurisdiction to hear and determine the proceeding involving the automatic stay in this case because the proceeding is a "core" proceeding. It is a type of proceeding specifically enumerated in 11 U.S.C. § 157(b). Moreover, it satisfies the Third Circuit's test for a "core" proceeding because it both invokes a substantive right provided by 11 U.S.C. § 362 and, by its nature, could arise only in the context of a bankruptcy case.

2. Petitioners failed to preserve for appeal any issue which they failed to raise in the lower court and any matter as to which they failed to place into the record on appeal any evidence.

As a general rule, an appellate court may only consider the record before the trial court. *In re* Indian Palms Assoc., Ltd., 61 F.3d 197 (3d Cir. 1995). *See also* Corestates Bank, N.A. v. United Chem. Technologies, Inc., 202 B.R. 33 (E.D.Pa. 1996) (refusing to hear claim that Chapter 11 plan was unfairly discriminatory as it was neither submitted to, nor considered by, the bankruptcy court); Harris v. City of Phila., 35 F.3d 840 (3d Cir. 1994) (noting that appellate court "will not consider issues that are raised for the first time on appeal"); *In re* Middle Atl. Stud Welding Co., 503 F.2d 1133 (3d Cir. 1974) (refusing to entertain contentions not raised before bankruptcy referee).

"[A] court should refuse to consider an issue that is raised for the first time on appeal." Hutchins v. Commonwealth Mortgage Corp., 165 B.R. 401 (E.D.Pa. 1994) (citations omitted). Such refusal is "essential in order that parties may have the opportunity to offer all the evidence they believe is relevant to the issues . . . [and] in order that litigants may not be surprised on appeal by final decisions there of issues upon which they have had no opportunity to introduce evidence." Singleton v. Wulff, 428 U.S. 106, 49 L.Ed.2d 826, 96 S.Ct. 2868 (1976) (quoting Hormel v. Helvering, 312 U.S. 552, 85 L.Ed. 1037, 61 S.Ct. 719 (1941)).

Even assuming, *arguendo,* that Petitioners' arguments regarding issues such as alleged alteration of loan documents somehow have merit, such issues were not raised in the Bankruptcy Court. To permit Petitioners to do so on appeal would result in surprise to Respondent from an appellate

decision on issues as to which Respondent had no opportunity to introduce evidence in the Bankruptcy Court.

The record on appeal in bankruptcy proceedings should contain the documentation necessary to afford the reviewing court a complete understanding of the case. *See* *In re* Candor Diamond Corp., 26 B.R. 844 (S.D.N.Y. 1983). *See also* *In re* Marquee Television Network, Inc., 98 B.R. 191, *vacated on other grounds,* 98 B.R. 191 (E.D.Pa. 1989) ("With the record . . . incomplete, appellant has not demonstrated that there is any error, let alone clear error in the judgment below."); *In re* Anes, 195 F.3d 177 (3d Cir. 1999) ("In core matters, the District Court reviews the Bankruptcy Court's findings of fact for clear error and its conclusions of law *de novo*."); Fed.R.Bankr.P. 8013 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous . . . .").

In this case, conspicuous by its absence from the record on appeal was any evidence that Petitioners took any action to vacate the Confessed Judgment or dispute the Proof of Claim, or regarding such matters as alleged alteration of loan documents and invalidity of the deed of trust, which would demonstrate any error in the judgment below.

Certain items which Petitioners attempted to include in the record on appeal were not part of the Bankruptcy Court record and were thus not properly part of the record on appeal. "It is well settled that 'documents presented for the first time at the appellate stage of any proceeding are generally not considered part of the record for the review by the appellate court.'" *In re* Green, 252 B.R. 769 (B.A.P. 8th Cir. 2000) (citations omitted). "'Only those papers and exhibits filed in the [trial] court can constitute the record on appeal.'" *Id.* (citations omitted). *See also* *In re* Neshaminy Office Bldg.

Assoc., 62 B.R. 798 (E.D.Pa. 1986) ("Items not before the Bankruptcy Court and not considered by it in rendering its decision may not be included in the record.") (citing Candor, *supra*). *Cf.* Indian Palms, *supra* (holding that "motion to strike was properly denied because the documents which [movant] sought to strike from the appellate record, having been filed in the bankruptcy case record, ***were*** part of the relevant record in this contested matter.") (citations omitted) (emphasis added).

The fact that Appellants are *pro se* has no bearing on this issue. The right of self-representation is not "a license not to comply with relevant rules of procedure and substantive law." Faretta v. Cal., 422 U.S. 806, 45 L.Ed.2d 562, 95 S. Ct. 2525 (1975). *See also* Young v. PHEAA, 225 B.R. 312 (Bankr.E.D.Pa. 1998) ("This court cannot and will not consider 'evidence' not of record. The only dispensation which we can make in light of the Debtor's *pro se* status is to lighten the admonition for her doing so."). *Cf. In re* Cook, 146 B.R. 934 (Bankr.E.D.Pa. 1992) (*pro se* litigant's attempt to attach to a post-trial brief "evidence" not offered at trial was unavailing); *In re* Wright, 223 B.R. 886 (Bankr.E.D.Pa. 1998) ("'Although the pleadings of *pro se* litigants are construed liberally, there is no lower standard when it comes to rules of evidence and procedure.' As to their claims . . . , they are therefore held to the same burdens of proving the necessary elements of their claims as any litigant, represented by counsel or not.") (citations omitted).

The consideration by the Circuit Court of matters not in the record on appeal would have been extremely prejudicial to Respondent, which had no opportunity to address such issues and documents in the Bankruptcy Court.

3. Petitioners are bound by their court-approved stipulations of fact and consents to relief from stay; the relief they seek is barred by the doctrines of issue preclusion, equitable estoppel and waiver.

"It is well recognized that 'valid stipulations entered into freely and fairly, and approved by the court, should not be lightly set aside.'" *In re* Martin, 253 B.R. 346 (M.D.Pa. 2000) (citations omitted). "In general, courts encourage parties to enter into stipulations to promote judicial economy by narrowing the issues in dispute during litigation. Allowing parties easily to set aside or modify stipulations would defeat this purpose, wasting judicial resources and undermining future confidence in such agreements." Waldorf v. Shuta, 142 F.3d 601 (3d Cir. 1998) (citations omitted).

In the case *sub judice,* Petitioners entered into seven Consent Orders while represented by legal counsel. The Consent Orders each contain Petitioners' stipulation to their indebtedness to Respondent, acknowledgment of default on their duties and obligations to Respondent under the terms of the preceding Consent Orders, and consent to relief from the 11 U.S.C. § 362 automatic stay. Each Consent Order was approved by the Bankruptcy Court.

Petitioners nevertheless repudiate these repeated stipulations and consents. Interestingly, Petitioners neither deny that they defaulted on their duties and obligations to Respondent under the terms of the most recent Consent Order nor give any valid reason why the stipulations set forth in the Consent Orders should be set aside. This case is just another frivolous attempt by Petitioners to confound Respondent's efforts to enforce its legal and contractual rights.

Petitioners fail to refute the fact that they took no action regarding either the Confessed Judgment or the Consent Orders, all of which are now final judgments. The matters thereby adjudicated, including the amounts due to Respondent and the stipulations to relief from stay, are thus established for purposes of this case. *See* Grogan v. Garner, 112 L.Ed.2d 755, 111 S.Ct. 654 (1991) (holding that issue preclusion applies to bankruptcy proceedings); Graham v. IRS, 973 F.2d 1089 (3d Cir. 1992) ("Issue preclusion applies when '(1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) that issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment. . . .'") (citations omitted); Bandai Am., Inc. v. Bally Midway Mfg. Co., 775 F.2d 70 (3d Cir. 1985), *cert. denied,* 475 U.S. 1047, 89 L.Ed.2d 574, 106 S.Ct. 1265 (1986) (holding that preclusive effect is given to issues parties agree to decide by consent decree).

Moreover, Petitioners' acknowledgment in their Amended Plan of Reorganization of Respondent's secured claim, coupled with their failure to object to the Proof of Claim, precludes Petitioners from now opposing Respondent's claim. *See* Corestates Bank, N.A. v. Huls Am., Inc. 176 F.3d 187 (3d Cir. 1999) (holding that confirmation of plan has collateral estoppel implications with regard to claims); Fed.R.Bankr.P. 3007 (setting forth procedure for objections to claims).

Petitioners do not and, indeed, cannot deny that they expressly consented to relief from the automatic stay. The doctrines of both waiver and equitable estoppel dictate that Petitioners' request for reinstatement of the stay was properly denied.

"The Pennsylvania Supreme Court has opined that the doctrine of equitable estoppel applies 'where one by his words or conduct willfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position . . . .'" *In re* IM, 256 B.R. 437 (Bankr.E.D.Pa. 2000) (quoting Ervin v. Pittsburgh, 339 Pa. 241, 14 A.2d 297 (Pa. 1940)). The doctrine of equitable estoppel has been further discussed as follows:

> Equitable estoppel is applied to avoid injustice in certain cases. It is triggered by the conduct of a party that is inconsistent with a position later adopted by it and which is prejudicial to the rights of another who relied on such conduct to their detriment. A party must prove the following in order to prevail on a traditional equitable estoppel claim: (1) a material misrepresentation; (2) reasonable reliance upon that misrepresentation; and (3) damage resulting from the misrepresentation.

In re Crain, 158 B.R. 608 (Bankr.W.D.Pa. 1994).

In the instant case, Petitioners consented, both affirmatively and by their acquiescence, to relief from the stay. In good faith reliance upon those consents, Respondent agreed, ***on seven separate occasions,*** to forbear from exercising its rights as creditor with regard to certain collateral and suffered damage as a result of that forbearance. Petitioners thus ought to be equitably estopped from asserting that they retain the benefit of the stay with regard to Respondent.

"Waiver may be established by a party's express declaration or by a party's undisputed acts or language so

inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary." Samuel J. Marranca Gen'l Contracting Co., Inc. v. Amerimar Cherry Hill Assoc. Ltd. P'ship, 416 Pa.Super. 45, 610 A.2d 499 (1992). In this case, Petitioners expressly stipulated to relief from the stay. Petitioners thereby waived any basis for asserting that they retain the benefit of the stay.

Even assuming, *arguendo,* that there was no express declaration by Petitioners, Respondent's reliance upon Petitioners' acquiescence to actions of their counsel gives rise to application of the doctrine of *implied* waiver. *See* *In re* F.B.F. Indus., Inc., 165 B.R. 544 (Bankr.E.D.Pa. 1994) ("[I]n Pennsylvania, the doctrine of implied waiver applies only in situations equivalent to equitable estoppel. To prevail the person claiming the occurrence of the waiver must show that he was misled or prejudiced by the other party's actions.") (citing Schifalacqua v. CNA Ins., 567 F.2d 1255 (3d Cir. 1977)).

4. Petitioners are bound by the actions of their attorneys.

"Even in ordinary circumstances, debtors totally unfamiliar with the bankruptcy process are bound by the actions of their attorneys." *In re* Quiles, 262 B.R. 191 (Bankr.D.R.I. 2001) (citation omitted). This Court expounded upon that principle as follows:

> [C]lients must be held accountable for the acts and omissions of their attorneys . . . . "Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion

> would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'"

Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship, 507 U.S. 380, 123 L.Ed.2d 74, 113 S.Ct. 1489 (1993) (citations omitted).

Assuming, *arguendo,* that Petitioners received ineffective assistance of counsel, Petitioners are nevertheless bound by the actions of their lawyers.

CONCLUSION

There is no compelling reason for this Court to reconsider its holdings on the foregoing matters.

The petition for a writ of *certiorari* must be denied.

Respectfully submitted,

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APPENDIX

Statutes

Title 11, United States Code, Section 362 (1998).

Automatic stay. (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title . . . .

* * *

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay -

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization . . . .

Title 28, United States Code, Section 157 (1994).

Procedures. (a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to -

* * *

(G) motions to terminate, annul, or modify the automatic stay . . . .

Title 28, United States Code, Section 158 (1994).

Appeals. (a) The district courts of the United States shall have jurisdiction to hear appeals

(1) from final judgments, orders, and decrees . . . .

* * *

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

Title 28, United States Code, Section 1334 (1994).

Bankruptcy cases and proceedings. (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11 . . . .

Supreme Court Rules, Rule 10.

Considerations Governing Review on Certiorari. Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last

resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Federal Rules of Bankruptcy Procedure, Rule 3007.
Objections to Claims. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

Federal Rules of Bankruptcy Procedure, Rule 8013.
Disposition of Appeals; Weight Accorded to Bankruptcy Judge's Findings of Fact. On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions

for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.